

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

DAVID WHITMORE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CIV-10-430-M
	)	
LT. JONES, et al.,	)	
	)	
Defendants.	)	

**ORDER**

On July 16, 2012, United States Magistrate Judge Robert E. Bacharach issued a Report and Recommendation in this action brought pursuant to 42 U.S.C. §§ 1983 alleging violations of plaintiff's federal constitutional rights. The Magistrate Judge recommended that the Court again grant summary judgment to the defendants based on plaintiff's nonexhaustion of administrative remedies.<sup>1</sup> The parties were advised of their right to object to the Report and Recommendation by August 2, 2012. After the granting of several extensions, plaintiff's objection was filed on August 31, 2012.

Upon de novo review, the Court:

- (1) ADOPTS the Report and Recommendation issued by the Magistrate Judge on July 16, 2012;
- (2) GRANTS summary judgment to the defendants based on the defense involving

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On June 17, 2011, the Court granted summary judgment to defendants Jones, Benoit, Harding and Bowen on the defense involving nonexhaustion of administrative remedies. On appeal, the Tenth Circuit Court of Appeals vacated the district court decision and remanded for consideration of the plaintiff's argument that prison officials had "thwarted his attempts to exhaust his formal administrative remedies as they pertain[ed] to his grievance No. 1-215." *Whitmore v. Jones*, 456 Fed. Appx. 747, 748, 750 (10<sup>th</sup> cir. Jan. 11, 2012) (unpublished)

nonexhaustion of administrative remedies<sup>2</sup>; and

- (3) ORDERS that judgment issue forthwith in favor of defendants and against plaintiff on defendants' defense involving nonexhaustion of administrative remedies.

**IT IS SO ORDERED this 25th day of September, 2012.**

  
VICKI MILES-LaGRANGE  
CHIEF UNITED STATES DISTRICT JUDGE

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In light of the Court's order and the appeals court's instructions on remand, the Court need not address defendants' other arguments for summary judgment.